88-623

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1988

JOSEPH WILLIAM DORN, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent

PETITION
FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Joseph William Dorn, Pro Se
2501 Thomasson Drive
Apart. 303
Naples, Florida 33962
(813) 774-3881

QUESTIONS PRESENTED FOR REVIEW

1) Does the United States Supreme Court not agree with Prof. Grossman, of the University of Wis., and Chairperson for the last two years of the Wis. Judiciary Commission, that only the law that became a part of the petitioner's Civil Contract of marriage, can be applied to the petitioner's divorce, otherwise any new enacted property division laws would be an Ex Post Facto Application of the law and violate Art. I, Sect. IO, of the United States Constitution ?

2)Does the U.S. Supreme Court not also agree that as per the Wis. Legislatures records, that Chap. 767.255 as written is a prospective law that can only be applied to people who were married AFTER the effective date of Feb. 1 st., 1978?

3) Does the U.S. Supreme Court not also agree that Chap. 247, of 1955, as ruled by the Wis. Supreme Court and the Wisconsin Legislature, as being in violation of the 14 th. Amendment of the U.S. Constitutional Laws and therefore a NO LAW and Void?

4) Does the U.S. Supreme Court not agree that the U.S. Dist. Ct., in Madison, Wis., Western District of Wis., with the Honorable Judge John C. Schabaz, and the U.S. 7th. Circuit Court of Appeals, with the Honorable Judges Bauer, Wood and Coffey, denied the Petitioner Due Process of Law by not ruling on all of his complaints, arguments, presentations and analysis?

5) Does the U.S. Supreme Court not agree that the U.S. Constitutional Amendment 11, should not be applied to the petitioner ?

6) That the defendants in this law suit are not immune from prosecution, as the State of Wisconsin court had no Lawful Power of Legal Authority, that only a legally valid law of the State of Wis. can give?

7) Does the U.S. Supreme Court not agree, that the Honorable Judge Robert R. Pekowsky, did not have any Jurisdiction to hear the petitioner's case, or to pass Judgment, as he had no legally valid law with which to do so, and therefore, is liable to damages, along with the other defendants ?

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INTRODUCTORY PRAYER

Petition, Joseph William Dorn, petitions this Honorable Court for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit reviewing the judgment entered August 16, 1988, affirming the judgment of the United States District Court in and for the Western District of Wisconsin in Joseph William Dorn vs. State of Wisconsin, 87-C-360-S.

OPINIONS BELOW

The judgment in the Western District Court of the United States of Wisconsin, denied the petitioner Equal Protection and Due Process of the 14th. Amendment, United States Constitution, by not ruling on any of the Petitioner's questions, authorities, laws or arguments. With the Honorable Judge John C. Shabaz, residing, that on motion from the petitioner on what legally, valid law of the State of Wisconsin, did the Honorable Judge Robert R. Pekowsky have that gave him the Lawful Power of Legal Authority required for Jurisdiction, or for the power to

Pass Judgment ? The Honorable Judge John C. Shabaz's answer was that the question had no legal merit.

On the same motion the petitioner asked for a ruling on the 11 th. Amendment of the United States as to whether it should apply to the petitioner and if it is not in violation to or of Art. 3, Sect. 2, of the United States Supreme Constitutional Laws?

The petitioner received no answers along with numerous others questions in the petitioner's brief.

The judgment of the United States Court of Appeals for the Seventh Circuit, denied the petitioner Equal Protection and Due Process of Law, of the 14th. Amendment, United States Constitution, by not ruling on any of the Petitioner's questions, laws or arguments or authorities. It is presumed that these courts believe that the Honorable Judge Robert R. Pekowsky, does not need a legally valid law to have jurisdiction or to pass judgment. For these reasons the Petitioner believes that the Honorable Judge John C. Shabaz for the United States District Court of Wisconsin, and the Honorable Judges, Chief Judge William J. Bauer, Judge Harlington Wood, Jr. and

Judge John L. Coffey, of the United States Seventh Circuit, have so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on August 16, 1988. This petition has been filed within 90 days of that date pursuant to the Supreme Court Rules.

STATUTES INVOLVED & CONSTITUTIONS

This Petition involves the Wisconsin Statutes, Chap. 247, of 1955, Chap. 246, later renumbered 766, Chap. 767.255, 18 USC Sect. 241 & 242, 42 USC 1983, 28 USC 1331 Federal Questions, 28 USC 1332 diversity of citizenship, Amendments 4, and 14th., Article I, Sect. IO, Article 3, Sect. 2 (1) of the United States Constitution. The Appellant - Petitioner is a Florida resident and all of the Appellees are Wis. residents.

STATEMENT OF THE CASE

Petitioner's wife filed for a divorce on March 12, 1984, and on his return from Florida, immediately went to see Attorney Jeffrey P. Clark, who was representing the Petitioner's wife. The petitioner told Atty. Clark, that the Wisconsin Chapter 767.255 property division law, created by the Wisconsin Legislature in Chap. 105, Laws of 1977, and was published on October 15, 1977, Section 62, Chap. 105 reads as follows: (1)" This act applies to all action affecting MARRIAGES , WHICH ARE COMMENCED ON AND AFTER THE EFFECTIVE DATE OF THIS ACT." The effective date is the first day of the 4th. month after its publication, or on February 1st., 1978. This Wisconsin Statute clearly confers jurisdiction upon the judge only to make property division in a divorce case between parties who were married after the effective date of February 1st., 1978. It clearly does not confer any jurisdiction whatsoever, upon the judge to make a property

division between parties to a divorce, where the marriage took place PRIOR to the effective date. Chap. 767.255 does not say that it applies to all actions of divorce, started on February 1978. For if it did then the Wisconsin Legislature would be guilty of enacting an EX POST FACTO LAW, in violation of the United States Constitution Art. I, Sect. IO. (1) " NO State shall pass any Ex Post Facto Law, or law impairing the Obligation of Contracts." This is to say that the only property division law that the judge has been conferred the lawful power of legal authority to apply is the law of celebration. For the Supreme United States Constitution confers no other power to the legislature to delegate, nor the power of the judge to re-enact or legislate his own property division laws for divorce. For the legislature is not sovereign; nor are all the departments of government, combined. The people only are sovereign. Nor can the matter be helped out by implication, for the Constitution in Express terms declares that "All Powers Not Hereby

Delegated, remain with the people." The petitioner then went on to point out that Chap. 247, of 1955, or the law of the celebration of my Civil Contract of marriage was ruled by the Wisconsin Supreme Court and the Wisconsin Legislature on April 11, 1972 as being an unconstitutional law, and thereby a No Law. From Attorney Clark's office, the petitioner went on to the Family Court Commissioner's office. Where the petitioner again repeated, his story to the Asst. Family Court Commissioner, Mr. Giese, who stated that they had new laws now, and did not go along with applying the old laws. The petitioner then went on over to the Honorable Judge Robert R. Pekowsky's office, and told him the same thing. Judge Pekowsky told the petitioner that he would not be paying any attention, to the petitioner, as he would be applying Chap. 767.255, as it was a retroactive law. The petitioner then told Judge Pekowsky whether he called it a retroactive law or an Ex Post Facto Law, it would be an Ex Post

Facto Application of Chap. 767.255 of the Wisconsin Statute, if he applied it to the petitioner's Civil Contract of Marriage. The petitioner then told the Honorable Judge Robert R. Pekowsky, that the only Wisconsin Statute that he could lawfully apply to the petitioner was Chap. 246, later renumbered 766, as the Wisconsin's Appeals Court in Plachta vs. Plachta ruled that this Statute applied EQUALLY to men and women. Chap. 246. 15 and 766.15 of this statute, EQUAL RIGHTS, requires my assets to be protected from being liable for the petitioner's wife's debts including her lawyer fees, as were UNMARRIED. This Chap. 246, later renumbered 766, was enacted to give women what the men already had within the Separate Property Laws, that became a part, just like written into the petitioner's Civil Contract of marriage. On January 1, 1986, Chap. 766 was repealed. The petitioner was told by three lawyers, because of his case. Wisconsin Statute Chap. 990, as

the written letter of the law of Wisconsin's Statutes along with Chap. 246, later renumbered 766, guarantees that no rights within Chap. 990 are taken away by the repeal of Chap. 246 or 766.

Chap. 247 of 1955, that became a part of the petitioner's Civil Contract of Marriage is as follows; Chap. 247.26 ALIMONY, property division, the court may further adjudge to the wife such alimony out of the estate of the husband, for her support and maintenance, and the court may finally divide and distribute the estate, both real and personal, of the husband, having always due regard to the legal special estate of the wife.

Chap. 247.23 Support money; the court may require the husband to pay such sums for the support of the wife and children and a sum to enable her to carry on or defend the action.

Chap. 247.28 Support and maintenance of wife and children; the court may make such order for support and maintenance of the wife and children, or any of them, by the husband or out of his property as the nature of the case may render suitable and proper.

Chap. 247.35, JUDGMENT NOT TO AFFECT WIFE'S PROPERTY

No judgment for a divorce of any kind shall in any way affect the right of a wife to the possession and control of her separate property, real or personal."

Equal Protection, is apparent that, as held in the following cases, equal protection means, EQUALITY OF THE SEXES: UNITED STATES SUPREME COURT;

Bradwell v. Illinois, 83 U.S. 130 (1872)
Frontiero v. Richardson, 93 S. Ct. 1764 (1973)
Goeseart v. Cleary, 335 U.S. 464 (1948)
Kovacs v. Cooper, 336 U.S. 77
Meyer v. Nebraska 262 U.S. 390
Missouri ex rel Gains v. Canada, 305 U.S. 337 (1938
Muller v. Oregon, 208 U.S. 412 (1908)
Reed v Reed, 404 U.S. 71
Stanley v. Illinois, 405 U.S. 645
Takahashi v. Fish & Game Comm. 334 U.S. 410 (1918)
Yick Wo v. Hopkins, 118 U.S. 356 (1886)
Orr v. Orr 99 S. Ct. 1102, cause 77-1119

UNITED STATES COURTS OF APPEALS

Bowe et al v. Colgate-Palmolive Co. 416 F 2d. 711
Weeks v Southern Bell Tel & Tel. Co. 408 F. 2d 228
Local 783, Allied Industrial Workers v General Electric Co. 471 F. 2d. 753 (1973)
Mooney v. Vitolo 435 F. 2d 838
Cameron v. Brock 473 F. 2d 608
Schlichte v Gay, case 74-1194 Mass.
Phillips v. Martin Marietta Corp. 411 F. 2d 1(C.A.5 1969) 416 F. 2d 1257 (1971)

UNITED STATES COURT OF DISTRICTS

Cohen v. Chesterfield Co. School Bd. 326 F. Supp.1159
Caterpillar Tractor Co. and Illinois Bell Tel & Tel. v. B. Grabiec, 317 F. Supp.
Kirsten v. Rectors & Visitors of U. of Va. 309 F. Supp. 184 (E.D. Va. 1969)

There are many more cases listed in State Cases and the U.S. Appeals Courts, and other authorities in my brief's to the U.S. District Court and the U.S. Appeals Court I have filed in. I would also like to mention, although I brought everything into the marriage compounded. I had always intended to take care of my former wife. The petitioner offered her $ 250,000. to settle everything, plus she has since inherited approx. $ 50,000., her lawyers told her NO.

After the petitioner had a talk with the Honorable Judge Robert R. Pekowsky, he went to the Wisconsin Bar Association to talk with one of the officers who invited him into one of the back offices. After telling the same story and problem the petitioner was having, was told to go over to Wisconsin State Capitol to see the Chief Legislature's Staff Attorney Donald Dyke. Mr. Dyke invited the petitioner into his office, and it was apparent that the Bar Association had called him ahead of time, that I was coming. Mr. Dyke went on to say that Chap. 767.255 was a retroactive law, but was

not an Ex Post Facto Law inviolation of either Wisconsin's Supreme Law of Art.I, Sect. 12, or United States Supreme Constitutional Law of Art. I, Sect. IO. The petitioner told Mr. Dyke that whether he called it a retroactive law or an EX POST FACTO LAW, if it was applied to the petitioner's divorce case in an Ex Post Facto application of the law, it violated the State of Wisconsin and the United States Supreme Laws. Mr. Dyke got so angry at the petitioner that he pushed him out the door. The petitioner then went over to the Wisconsin Judiciary Commission. Executive Director Elena A. Cappella, was told the petitioner's story, and said that the petitioner could not file a complaint until, the Honorable Judge Robert R. Pekowsky did this wrong to the petitioner. The petitioner then went out to the home of Professor Joel Grossman, of the University of Wisconsin, and for the last two years, the chairperson of the Wisconsin Judiciary Commission. Prof. Grossman told the petitioner that Chap. 767.255 could not be

applied in an Ex Post Facto application toward any parties marriage contracted prior to the effective date of Feb. 1st., 1978. The petitioner then showed Prof. Grossman Chap. 247, of 1955. Prof. Grossman again agreed that this Wisconsin Statute violated the United States and Wisconsin Supreme Laws, and as shown Prof. Grossman, it had been already ruled by the Wis. Supreme Court and the Legislature as being in violation of Art. I, Sect. I, of the Wisconsin Constitution and the 14th. Amendment of the United States Constitution, therefore forever void, and a NO LAW. Prof. Grossman told the petitioner that he would talk to the Judiciary Commission about it. Later on the petitioner filed a complaint with the Commission, and the case was closed with no answers. This left the Honorable Judge Robert R. Pekowsky no lawful power of legal authority to have jurisdiction or to pass judgment , as only a valid law can give. The petitioner and his wife were married on October 27, 1956, 21 years PRIOR to the Chap. 767.255 law. The petitioner brought into the

marriage approx. $ 150,000. compounded to a little over $ 1,000,000. at divorce, kept it as his sole, separate and individual assets, and was in a semi retirement all through the marital years, with a net after taxes, proven by State and Federal tax returns, of marital income of approx. $7,428.07 per year, supporting a wife who did not work outside the home, and raising two children.

The petitioner did not want his wife to know how much his assets were, and with the Honorable Judge Robert R. Pekowsky having no legally valid law for jurisdiction or to pass judgment, claimed his guaranteed rights within the Amendment IV, of the United States Supreme Constitutional Laws. " The right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The petitioner presented to the county court the cases of Beam v. Bank of America, whereas Mr. Beam was able to keep all of his assets broughten into the marriage, and the case of Pulitzer v. Pulitzer, where only an ESTIMATE of Mr. Pulitzer's

assets were required. This court case became such an abuse of justice towards the petitioner, that the court ordered the taking of the petitioner's assets, 4 lawyers, Attorneys Jeffrey P. Clark, Michael J. Lawton, Larry S. Meihsner and Reggie Emshoff, accepting this taking of the petitioner's assets to the tune of approx. 95 % of everything, while having a big bailiff standing along side of me, as they threatened the petitioner with 30 days in jail and $ 500. a day fines. With interest to date they took over $ 1,000,000. from the petitioner with no legally valid law, or lawful power of legal authority, as only a valid law can give.

Former Governor Anthony Earl, former Atty. Gen. Bronson La Follette and former Asst. Atty. Gen. Charles Larson of Wisconsin, were served with papers by the petitioner, asking them, along with present Governor Tommy Thompson, Atty. Gen. Donald Hanaway, who is a former Wisconsin Senator, and Asst. Atty. Gen. George B. Schwahn, to stop fighting the petitioner to deny me the protection from the deprivation of the written letter of the

United States Constitutional Laws, United States Codes, the Written Letter of the Wisconsin Supreme Constitutional Laws, and the Written Letter of the Wisconsin Statutes Chap. 247, of 1955 and Chap. 246, later renumbered 766, in upholding their Sworn Oaths.

Wisconsin Governor Tommy Thompson, who is an Attorney, and Wisconsin Attorney General Donald Hanaway are parties to the petitioner's law suit for the fighting to deny the petitioner the protection of the Supreme United States Constitutional laws, the Supreme Wisconsin Constitutional Laws, Federal and Written Letter of the Wisconsin State Statutes, of guaranteed rights of the petitioner.

The 11th. Amendment of the United States Constitution in this case was brought up as being contrary to Art. 3, Sect. 2 (1) U.S. Constitution, " between a State and Citizens of another State." The States at the time of this Amendment were deeply in debt, and was designed to prevent law suits against the States, from creditors. It was not designed to stop law suits against defendants

who abuse their limited powers. It was also a purely political, self interest, Amendment introduced the day after the United States Supreme Court had ruled a citizen of one State had the right to sue another State.

" Congress may not, by any definition it may adopt, conclude the right to change the framers original intent, since it cannot by legislation ALTER or CHANGE the Constitution from which it alone derives its powers to legislate, and within whose limitations alone, that power can be lawfully exercised. The U.S. Constitution confers no such powers."

The petitioner has had two Governors, two Atty. Generals, two Asst. Atty. Generals, the Judiciary Commission, Legislature's Staff Attorney, the Wis. Bar Association, the Wisconsin Justice Department, the Board of Attorneys Professional Responsibility, the Honorable Judge Robert R. Pekowsky, Attorneys Clark, Lawton, Meihsner and Emshoff all fully aware that Chap. 247 of 1955, and Chap. 767.255 was an illegal act, to enforce on the petitioner, but none

of them would come forth and say it was wrong. For these reasons and many others, they should be charged with a conspiracy within 18 USC 241, and 242. And to say they have not violated the Petitioner's Civil Rights within 42 USC 1983, would be presumed a total error. Please rule on all of the laws, petitioner has presented, plus the questions and arguments.

REASON FOR GRANTING THE WRIT

a) Petitioner is now praying the United States Supreme Court, as a Pro Se, because his assets, are now very low, after firing three attorneys who took his money but refused to fight his case as agreed to, without returning his retainer.

b) This is the fifth court the petitioner is praying, while never having his day in court, for the final judgment, through trickery, changing dates, changing them back, Judge Pekowsky was going to withdraw, then changed his mind, inflating assets, with no more then stated estimates. Applying laws the Wisconsin State Legislature says is illegal to apply. Refusing to

consider the tax returns from 1970 through 1984. which proved without doubt that marital assets could possibly exist, from the net income.

CONCLUSION

For the foregoing reasons, petitioner Joseph William Dorn respectfully request that a writ of certiorari issue to review the lack of questions answered in the judgment of the United States Court of Appeals for the 7 th. Circuit. Such as to what Wisconsin Statute they were referring to, Chap. 247, of 1955 or Chap. 767.255, or the Ex Post Facto Application of Chap. 767.255 was not unconstitutional? Or that the Honorable Judge Robert R. Pekowsky, not having a legally valid State of Wisconsin Statute, that he could in no way have the lawful power of legal authority to have jurisdiction or to pass judgment ? Or whether Chap. 246, later renumbered 766, as the Wisconsin Appeals Court, had ruled must be applied to men and women alike. That Chap. 767. 255 of the Wisconsin Statutes, not being legal to apply it to anyone married prior to Feb. 1,

1978. That the defendants in this case are not immune, as there was no wheres a Wisconsin Statute that could give jurisdiction, or the power to pass judgment. That a complete and total injustice was done to the petitioner, and should be awarded damages, as he has asked for. That the tax returns prove without a doubt that the petitioner had broughten all of his sole, separate and individual assets into the marriage.

Dated: Oct 6, 1988 Respectfully submitted,

Pro Se Litigant Joseph William Dorn

2501 Thomasson Dr., Apt. 303, Naples, Florida 33962 Phone (813) 774-3881

I, Joseph William Dorn, do hereby certify, and as and affidavit, that I have mailed 3 copies each of this document, this day Oct 6, 1988, by First Class Mail to the following. Mr. Lawton, and Mr. George B. Schwahn, by the petitioner.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 87- 2447

D.C. Docket No. 87 C 360

UNITED STATES OF AMERICA,

Plaintiff-Appellant

vs.

STATE OF WISCONSIN, et al,

Defendants-Appellees

Appeal from the United States District
for the Western District of Wisconsin

Before Hon. William J. Bauer, Chief Judge
Hon. Harlington Wood Jr. Circuit Judge
Hon. John L. Coffey, Circuit Judge

ORDER - JUDGMENT

Joseph William Dorn appeals from the district court's dismissal of his 42 U .S. C. Sect. 1983 suit and the denial of his motion for reconsideration. The suit, stemming from Dorn's Wisconsin divorce proceedings, alleges that the Wisconsin state judge who presided over the divorce action, his ex-wife's attorney (as well as two other attorneys from the same law firm), and the referee appointed by the state court to valuate the

marital estate, conspired to deprive Dorn of his property in violation of due process. He has also sued the State of Wisconsin, Governor Tommy Thompson, and the State Attorney General on the ground that Wisconsin's property statute is an unconstitutional ex post facto law. We agree with the district court's analysis and disposition of the issues. Accordingly, its decisions are hereby. AFFIRMED

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Before Hon. Judge John C. Shabaz...Case No. 87-C-360-S.. Request FOR A LIST OF STATE LAWS, GIVING JURISDICTION TO THE DEFENDANTS, AND OPINION, ON WHY THE U.S. AMEND. IS NOT IN VIOLATION OF ART. 3, Sect. 2, of the UNITED STATES CONSTITUTION.

a) The Plaintiff requests a list of the State Laws of Wisconsin, giving jurisdiction to the Defendants, mentioned in the denying of the motion for reconsideration, ordered September 3 rd., 1987 ?
b) What the Plaintiff is alleging in the U.S. Amend. 11 th., is that it is notwithstading, in

the Art. 3, Sect. 2, U.S. Constitution as follows; "BETWEEN A STATE AND CITIZENS OF ANOTHER STATE." It changes the original intent of the framers. If Congress can Amend. the whole U.S. Constitution, then it is as Chief Justice John Marshall said in Marbury vs. Madison, 5 U.S. 137, 2 L. Ed. 60, " an absurd attempt, on the part of the people, TO LIMIT A POWER IN ITS OWN NATURE ILLIMITABLE." c) As in No. 256 16 Am. Jur. 2d, " NO ONE IS BOUND TO OBEY AN UNCONSTITUTIONAL LAW," is why, the petitioner got into this expecting Judge Pekowsky, not to enforce an Ex Post Facto Application, of Chap. 767.255, Wis. Statute.

Sept. 9, 1987 Joseph William Dorn

ORDER 87-C-360-S... U.S. Dist. Court

Plaintiff has appealed this case to the Seventh Circuit Court of Appeals and paid the appeal fee. He is also requesting a list of the state laws giving jurisdiction to the state defendants. THIS REQUEST IS WITHOUT LEGAL MERIT AND WILL BE DENIED.

SO ORDERED this 15 th day of September, 1987.

By THE COURT, JOHN C SHABAZ, District Judge.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

JOSEPH WILLIAM DORN

Paintiff,

vs.

STATE OF WISCONSIN et al.

Defendants.

ORDER

87-C-360-S

Plaintiff filed this civil action under 42 U.S.C. Sect. 1983 on May 26, 1987. On June 16, 1987, defendants State of Wisconsin, Tommy Thompson, Donald Hanaway and Robert R. Pekowsky, by their attorney, filed a motion to dismiss pursuant to Federal Rules of Civil Procedure, Rule 12 (b)(6). Defendants Jeffrey Clark, Michael Lawton and Larry Meihsner, by their attorney, filed a motion to dismiss on June 17, 1987. Defendants Reginald Emshoff and Gunkel Co., (now known as Madison Valuation Assoc.) filed a motion for summary judgment, or in the alternative a motion to dismiss on July 9, 1987. The Plaintiff has responded to these motions.

FACTS

For the purposes of this decision, the allegations in Plaintiff's complaint must be taken as true.

The plaintiff was a party in a divorce proceeding in Dane County Circuit Court presided over by Judge Robert Pekowsky. On Aug. 7, 1986, a judgment of divorce was granted to Lois Dorn with the court taking all other issues under advisement. Jeffrey P. Clark was Lois Dorn's attorney throughout these divorce proceedings.

On January 20, 1986, Judge Pekowsky ordered Madison Valuation Associates, Inc. (Gunkel Co.) to act as a referee in this divorce proceeding and to reconstruct the marital estate. An employee of the company, Reginald Emshoff, conducted an extensive review of the assets of the parties and submitted the " Referee's Final Report " to Judge Pekowsky on July 14, 1986. On April 6, 1987, Judge Pekowsky rendered findings of facts and conclusions of law which awarded 50 % of the marital assets to Lois Dorn. The Plaintiff did not appeal this de-

cision.

Plaintiff claims that the defendants conspired to deprive him of his property because property solely owned by him was considered marital property. He also claims that the state laws permitting the division of marital property violated his constitutional rights.

CONCLUSIONS OF LAW

Defendants State of Wisconsin, Tommy Thompson and Donald Hanaway move to dismiss this case for lack of subject matter jurisdiction. The Eleventh Amendment bars the suit of a state in a federal court without its consent. Pennhurst State School Hospital v. Halderman, 465 U.S. 89 (1984). Therefore, the State of Wisconsin must be dismissed as a defendant in this action.

State officials Tommy Thompson and Donald Hanaway can be sued only if it is alleged that they violated an individual's constitutional rights. There are no allegations in plaintiff's complaint that either defendant violated his constitutional rights. In fact, at the time the divorce decree

was entered in August 1986, neither of the defendants held their present official state positions. Therefore, defendants Tommy Thompson and Donald Hanaway must be dismissed from this action.

Defendant Robert Pekowsky moved to dismiss this action against him based on the doctrine of judicial immunity. In Stump v. Sparkman, 435 U.S. 349 (1978), the United States Supreme Court held that a judge is immune from suit for money damages when acting as a judicial officer within the scope of his JURISDICTION. In this case, Robert Pekowsky the judge presiding over the plaintiff's divorce proceedings. He is absolutely immune from suit. Therefore, his motion to dismiss will be granted.

Defendants Jeffrey Clark, Michael Lawton, and Larry Meihsner move to dismiss this action for failure to state a claim upon which relief can be granted. First the Court notes that there are no specific allegations against either defendants Michael Lawton or Larry Meihsner. Therefore, they will be dismissed.

Plaintiff alleges that Jeffrey Clark repre-

sented Lois Dorn in her divorce proceedings. Plaintiff alleges that the defendant conspired to violate his constitutional rights by depriving him of his property in the property division in his divorce judgment.

To state a claim under 42 U.S.C. Sect. 1983, plaintiff must allege that the defendants deprived him of a federal right while acting under color of state law. Gomez v. Toledo, 446 U.S. 635 (1980). In plaintiff's case, he has not alleged that defendant Clark was acting under color of state law, but that he was a private attorney.

If the defendant conspired with state officials to deprive plaintiff of his constitutional rights, he could be found to have been acting under color of state law. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970). The Seventh Circuit Court of Appeals has held that " even a pro se litigant must allege somrthing in the way of fact before his allegations of conspiracy may be deemed to state a claim... Mere conjecture that there

has been a conspiracy is not enough to state a claim..Tarkowski v. Bartlett Realty Co., 644 F.2d 1204, 1208 (7th Cir. 1980)

In Dennis v. Sparks, 449 U.S. 24 (1980), the Court held that merely being on the winning side of a lawsuit does not make a person a co-conspirator with the judge. See also Sparkman v McFarlin, 602 F. 2d 261 (7th. Cir. 1979). Plaintiff has not alleged sufficient facts to support a claim that defendant Clark conspired with any state officer or judge to deprive him of his constitutional rights. Therefore, he was not acting under color of state law.

In a similar case, Aldabe v. Aldabe, 616 F. 2d 1089 (9th Cir. 1980), a woman filed a civil rights complaint in federal court alleging that attorneys and judges involved in her divorce proceedings conspired to deprive her of constitutional rights.

In dismissing her claims, the Court stated:

> Appellant's dissatisfaction with the property settlement reached in her prior divorce proceedings, and her conclusiory allegations that

the appellees had conspired to prevent her from effectively prosecuting her divorce case are insufficient to support a Sect. 1983 claim. Finley v. Rittenhouse, 416 F. 2d. 1186 (9th. Cir. 1969) 616 F. 2d. at 1092

The Court must reach the same conclusion in Plaintiff's case. Plaintiff is dissatisfied with the result of his divorce proceedings, but has not made any allegation to support a claim or inference of a conspiracy. If he was unhappy with the result of his state court proceeding, his remedy was to appeal the decision to the State Court of Appeals. He has not stated a claim for relief against defendant Jeffrey Clark. Therefore, Jeffrey Clark's motion to dismiss will be granted.

Defendants Reginald Emshoff and Gunkel Co. move to dismiss this action for failure to state a claim for relief under federal law. They claim that they are immune from suit because they were acting in a quasi-judicial capacity.

In Ashbrook v Hoffman, 617 F. 2d 474, (7th. Cir. 1980) the Court held that commissioners appointed in a divorce action were absolutely im-

mune from suit. The Court stated that these commissioners were quasi-judicial officers whose official duties had an integral relationship with the judicial process.

In plaintiff's case defendants Emshoff and Gunkel Co. were appointed by the judge as a referee to determine the amount of marital assets. The Court incorporated the referees's work product in the judicial process. Therefore, according to Ashbrook, defendant Emshoff and Gunkel Co. were absolutely immune from suit and their motion to dismiss will be granted.

In conclusion, the Court finds that plaintiff has failed to state a claim against any of the defendants. Therefore, this case must be dismissed.

ORDER

IT IS ORDERED that defendants' motions to dismiss are GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of the defendants and against the plaintiff, Dismissing plaintiff's complaint

with prejudice and costs.

Entered this 13th day of August, 1987

BY THE COURT:

JOHN C. SHABAZ
District Judge

property relationship,[29] arising out of civil contract to which the agreement of the parties is essential,[30] and based on the recognized equality of the parties.[31] In another and more abstract sense, marriage is a social institution.[32]

§ 7. —As contract or status

Marriage has its inception in contract; it is a civil contract[33] in that it is a present agreement of the parties, by words in the present tense,[34] to be husband and wife and to assume all the rights and duties of the marital relationship,[35] and in that it is valid only when entered voluntarily by parties who have capacity to contract marriage.[36]

A marriage contract is a contract the impairment of which

29. Rotwein v Gersten (1948) 160 Fla 736, 36 So 2d 419.

A marital relation is a purely personal relationship. Price v Price (1934) 114 Fla 233, 153 So 904.

30. § 7, infra.

31. The marriage relationship places both parties on a basis of complete equality, as partners sharing equal rights and obligations in the marriage relationship and sharing equal burdens in the event of dissolution. Fitzwater v Fitzwater (1974, Fla App D1) 296 So 2d 74.

32. § 9, infra.

33. Daniel v Sams (1880) 17 Fla 487; Chaves v Chaves (1920) 79 Fla 602, 84 So 672; Cooper v Cooper (1935) 120 Fla 607, 163 So 35; Carretta v Carretta (1952, Fla) 58 So 2d 439.

34. Marsicano v Marsicano (1920) 79 Fla 278, 84 So 156 (to constitute valid marriage, there must be present agreement to become husband and wife immediately from time mutual consent is given).

An express future condition either as to the creation of the marriage status or with regard to the relations of the parties is fatal to a claim of marriage formed by words of present assent. Peters v Weinberger (1974, DC Fla) 377 F Supp 294, aff'd without op (CA5 Fla) 507 F2d 1279.

35. Madison v Robinson (1928) 95 Fla 321, 116 So 31; Kennedy v Kennedy (1931) 101 Fla 239, 134 So 201; Orr v State (1937) 129 Fla 398, 176 So 510; State ex rel Foster v Anders (1938) 135 Fla 59, 184 So 515, reh den 135 Fla 641, 185 So 321; Rotwein v Gersten (1948) 160 Fla 736, 36 So 2d 419.

36. A marriage contract has all the attributes of pure contract whether one considers the capacity of the parties to contract, the subject matter, or the consideration. Ponder v Graham (1851) 4 Fla 23; State ex rel. Foster v Anders (1938) 135 Fla 59, 184 So 515, reh den 135 Fla 641, 185 So 321.

Forms: Contract to marry, 12 Am Jur Legal Forms 2d, Marriage § 171:14.

Capacity of parties, see §§ 14–17, infra.

violates constitutional prohibitions against the impairment of contracts.[37]

Although marriage has its inception in contract in that it is based on the voluntary agreement of the parties, and may be regarded as contractual in nature, it is at the same time more than a contract; the consummation of a marriage operates to create the marital status, that of husband and wife. In other words, marriage is also a civil status.[38]

§ 8. —Distinguishability from other contracts

Marriage as a contract is sui generis and distinguishable from other contracts in many respects. It is said to be something more than an ordinary contract in that it involves a personal union of those participating in it, of a character unknown to any other human relation,[39] and in that it is introductory to a status controlled by the state.[40] Consequences of the marriage contract are more significant to the party politic than those of other contracts; as to marriages, the state never stands indifferent but is always a party the interest of which must be taken into account.[41]

Marriage differs from other contracts in the numerous restrictions on capacity to contract it[42] and in that it is not revocable at the will of the parties.[43] Remedies for breach of the contract of marriage, that is, actions for annulment or dissolution of marriage, differ widely in most respects from other remedies ex contractu.[44]

37. See Fla Jur 2d, CONSTITUTIONAL LAW § 322.

38. Madison v Robinson (1928) 95 Fla 321, 116 So 31; Chisholm v Chisholm (1930) 98 Fla 1196, 125 So 694; Rotwein v Gersten (1948) 160 Fla 736, 36 So 2d 419.

The courts of this state regard marriage as a status or relationship actuated by love, affection, and bearing the purpose of establishing a home and family. Goldman v Dithrich (1938) 131 Fla 408, 179 So 715.

39. Between the parties marriage creates a mutual right of consortium and affection, that is, such a right as is associated with a social or personal relation. Rotwein v Gersten (1948) 160 Fla 736, 36 So 2d 419.

40. § 7, supra.

41. § 11, infra.

42. §§ 14–17, 38–47, infra.

43. §§ 11, 12.

44. Annulment of marriage, see §§ 352–378, infra.

property rights of the parties. In determining the parties' intention to such contracts, the courts are guided by substantially the same rules as are controlling in the construction of other agreements.[39]

Marriage, antenuptial, and postnuptial contracts are subject to the law that exists at the time of contracting, including the law rendering a husband responsible for the support of his wife while they are married.[40]

§ 288. Antenuptial agreements

Marriage itself is a sufficient consideration to support an antenuptial agreement.[41] It follows that a deed by one spouse to

Property settlements in dissolution of marriage cases, see §§ 379–398, infra.

39. Northern Trust Co. v King (1942) 149 Fla 611, 6 So 2d 539; Hall v Hall (1961, Fla App D3) 135 So 2d 432.

As in other types of contracts, an antenuptial contract can be abandoned or mutually rescinded by the parties. McMullen v McMullen (1966, Fla App D2) 185 So 2d 191.

The law does not presume a gift between a former husband and a former wife in interpreting a property settlement agreement. Waters v Waters (1975, Fla App D3) 310 So 2d 452.

40. Belcher v Belcher (1972, Fla) 271 So 2d 7, conformed to (Fla App D3) 272 So 2d 832, later app (Fla App D3) 290 So 2d 126.

41. Fahs v Merrill (1944) 142 F2d 451, revg 51 F Supp 120, affd 324 US 308, 89 L Ed 963, 65 S Ct 655, reh den 324 US 888, 89 L Ed 1436, 65 S Ct 863; O'Shea v O'Shea (1969, Fla App D4) 221 So 2d 223, cert den (Fla) 225 So 2d 919.

Where an agreement in consideration of marriage required the wife to transfer her assets to joint ownership with the husband, and this was done by the wife knowingly and over an appreciable period of time, the unqualified and completed gift was valid in furtherance of the valid antenuptial agreement, and the lower court improperly awarded all the jointly held property to the wife in a divorce decree. O'Shea v O'Shea (1969, Fla App D4) 221 So 2d 223.

The creation of an estate by the entireties of all real property owned by the defendant and his wife as tenants in common, in accordance with agreements executed a few months prior to and simultaneously with the entry of judgment against the defendant, did not constitute a fraudulent conveyance, since a conveyance of property for consideration of marriage pursuant to an antenuptial agreement is not fraudulent as to creditors for lack of consideration, and would not be set aside even if made with a fraudulent design in the absence of clear proof as to the wife's participation in the intended fraud. Green v Casper (1977, Fla App D3) 346 So 2d 1204.

Forms: Antenuptial agreements, 9 Am Jur Legal Forms 2d, Husband and Wife §§ 139:11–139:43.